

1 EDMUND G. BROWN JR.  
Attorney General of California  
2 JAMES M. LEDAKIS  
Supervising Deputy Attorney General  
3 ERIN M. SUNSERI  
Deputy Attorney General  
4 State Bar No. 207031  
110 West "A" Street, Suite 1100  
5 San Diego, CA 92101  
P.O. Box 85266  
6 San Diego, CA 92186-5266  
Telephone: (619) 645-2071  
7 Facsimile: (619) 645-2061  
*Attorneys for Complainant*

8  
9 **BEFORE THE**  
**BOARD FOR PROFESSIONAL ENGINEERS AND LAND SURVEYORS**  
10 **DEPARTMENT OF CONSUMER AFFAIRS**  
**STATE OF CALIFORNIA**

11  
12 Case No. 926-A

In the Matter of the Accusation Against:

13 JOSEPH CHARLES SMYTH  
9121 Creekford Drive  
14 Lakeside, CA 92040

**A C C U S A T I O N**

15 Civil Engineer License No. C 21650

16 Respondent.

17  
18  
19 Complainant alleges:

20 **PARTIES**

21 1. David E. Brown (Complainant) brings this Accusation solely in his official capacity  
22 as the Executive Officer of the Board for Professional Engineers and Land Surveyors,  
23 Department of Consumer Affairs.

24 2. On or about June 19, 1972, the Board for Professional Engineers and Land Surveyors  
25 issued Civil Engineer License Number C 21650 to Joseph Charles Smyth (Respondent). The  
26 Civil Engineer License was in full force and effect at all times relevant to the charges brought  
27 herein and will expire on September 30, 2011, unless renewed.  
28

1  
2  
3  
4  
5  
6  
7  
8  
9  
0  
1  
2  
3  
4  
5  
6  
7  
8  
9  
0  
1  
2  
3  
4  
5  
6  
7  
8

2  
3  
4

5  
6  
7  
8

9

10  
11

12

13

11

## 17

18

19  
20

21

22

23  
24

21

26  
27  
28

1 (b) The board shall establish qualifications and standards to use the title  
2 "soil engineer," "soils engineer," or "geotechnical engineer." However, each  
3 applicant shall demonstrate a minimum of four years qualifying experience beyond  
4 that required for licensure as a civil engineer, and shall pass the examination  
5 specified by the board.

6 (c) For purposes of this section, "qualifying experience" means proof of  
7 responsible charge of soil engineering projects in at least 50 percent of the major  
8 areas of soil engineering, as determined by the board.

9 (d) Nothing contained in this chapter requires existing references to "soil  
10 engineering," "soils engineering," "geotechnical engineering," "soil engineer,"  
11 "soils engineer," or "geotechnical engineer," in local agency ordinances, building  
12 codes, regulations, or policies, to mean that those activities or persons must be  
13 registered or authorized to use the relevant title or authority.

### 14 REGULATORY PROVISIONS

15 8. Title 16, California Code of Regulations section 418 states:

16 (b) When considering the suspension or revocation of the certification of an  
17 engineer-in-training or a land surveyor-in-training, or the license of a professional  
18 engineer or a professional land surveyor, or the authority to use the title "structural  
19 engineer," or the authority to use the title "geotechnical engineer" under Section  
20 490 of the Code, the Board will consider the following criteria in evaluating the  
21 rehabilitation of such person and his or her present eligibility to retain his or her  
22 license:

23 (1) The nature and severity of the act(s) or crime(s) under consideration as  
24 grounds for suspension or revocation.

25 (2) Evidence of any act(s) committed prior to or subsequent to the act(s) or  
26 crime(s) under consideration as grounds for suspension or revocation which  
27 could also be considered as grounds for suspension or revocation under  
28 Section 490 of the Code.

(3) The time that has elapsed since commission of the act(s) or crime(s)  
referred to in subdivision (1) or (2).

(4) The extent to which the licensee has complied with any terms of parole,  
probation, restitution, or any other sanctions lawfully imposed against the  
license.

(5) Any evidence of rehabilitation submitted by the licensee.

(6) Total criminal record.

(7) If applicable, evidence of expungement proceedings pursuant to Section  
1203.4 of the Penal Code.

1  
2  
3  
4  
5  
6  
7  
8  
9  
0  
1  
2  
3  
4  
5  
6  
7  
8  
9  
0  
1  
2  
3  
4  
5  
6  
7  
8

2  
3  
4  
5

## 6

7  
99  
0  
1  
23  
4  
5  
6  
7

8  
9  
0  
1  
2  
3  
4  
5  
6  
7

1 among other references to “soil engineer.” Respondent’s report did not meet the standard of care  
2 for “soils reports” as follows:

3 **Municipal Code Requirements**

4 c. Respondent’s 2006 report does not comply with the City of San Diego Municipal  
5 Code Chapter 14, General Requirements, subsection 144.0220. The city requirements clearly  
6 state that seismic hazards need to be addressed. Respondent’s reports are silent regarding  
7 geological or seismic hazards and he failed notify the reader the need for a geologic or seismic  
8 hazards to be addressed.

9 **Field Exploration**

10 d. Respondent’s field (subsurface) exploration program was insufficient: The field  
11 exploration scope of work undertaken by Respondent consisted of two, three-foot deep hand-dug  
12 test pits. The depth (3-feet) of the subsurface exploration was inadequate in the absence of any  
13 other subsurface information or data. Instead, Respondent should have conducted soil borings to  
14 much deeper depths, depending on the site conditions and the proposed improvements.  
15 Respondent should have performed a subsurface investigation to a depth on the order of 20 feet if  
16 it could be determined that ground water was at least 50 feet deep, or 50 feet if ground water was  
17 shallower.

18 **Laboratory Tests**

19 e. Respondent did not perform testing to address pavement design or sulfate exposure  
20 to concrete, and his laboratory testing for slab on grade design fell below the standard of care.  
21 Respondent performed selected laboratory tests on samples obtained from the pits that consisted  
22 of: one in-place density test; a remolded direct shear test (cohesion and friction angle); one  
23 maximum dry density and optimum moisture determination; and an expansion index test. The  
24 depth that the samples were taken or which test pit the samples were obtained from was not  
25 indicated in the report. Nor was a site plan or map with the test pit locations included in the  
26 report. Respondent was also inconsistent with his characterization of expansive soil, referring to  
27 the soil as non-expansive, even though his Expansion Index test result was 27, which is  
28 considered to be “expansive” according to the California Building Code. As the soil was

1 expansive according to the Building Code, Respondent should have performed a sieve analysis  
2 and hydrometer test and Atterberg Limits in order to design a Post-tension slab or a conventional  
3 slab on grade foundation system. An R-value test was also required in order to design asphalt  
4 concrete pavement sections, which Respondent did not perform. A soluble sulfate test to  
5 evaluate the exposure concrete was also missing.

6 **Geotechnical Issues Not Addressed or Analyzed**

7 f. A number of standard geotechnical issues that geotechnical investigation reports  
8 commonly address and/or for which recommendations are provided, were missing from  
9 Respondent's report, including the following:

10 i. Ground Water: Respondent failed to investigate or address ground water.  
11 Respondent could have relied upon reports from nearby properties and/or regional groundwater or  
12 water well information on file with water agencies or the County to have included some  
13 discussion regarding ground water. Respondent should have established the ground water level.

14 ii. Retaining Walls: Respondent failed to provide standard design  
15 parameters for earth pressures, back-drainage, friction factors and passive soil resistance for  
16 retaining walls. It is common practice to provide these standard design recommendations in the  
17 even such walls may be needed.

18 iii. Compressible Soils: Respondent failed to address the potential for  
19 compressible soils.

20 iv. Respondent failed to provide asphalt concrete pavement  
21 recommendations.

22 v. Slab-on-Grade Floors: The recommendations for slab-on-grade floors  
23 were not in compliance with then-current Building Code (2001 California Building Code) criteria.

24 vi. Seismic Hazards: Respondent failed to address seismic hazard issues,  
25 including liquefaction, lurching, and ground shaking potential.

26 vii. Other Seismic Design Parameters: Respondent failed to provide other  
27 seismic design parameters for building design, as outlined by the Building Code.

28

viii. References: Respondent failed to make any reference to prior reports, standard or published reports or data (USGS, San Diego County resources, soil maps, etc) including the site history. Respondent should have included references for geotechnical reports or resources that were reviewed in completing the report.

ix. Potential for Impacts to Adjacent Properties: Respondent failed to address the potential for impacts to adjacent properties or improvements. Respondent should have commented on whether the proposed improvements could impact adjacent structures or improvements.

x. Geological conditions or hazards: Respondent should have addressed and discussed any geological conditions or hazards, or the absence thereof, that could potentially impact the site or proposed improvements.

#### **SECOND CAUSE FOR DISCIPLINE**

(Violation of Chapter – Use of the Title “Soils Engineer” Without Authorization at Projects Located on Alpha Street in San Diego and Elm Avenue in Imperial Beach)

11. Respondent is subject to disciplinary action under section 6775(h) for violating Code section 6736.1, use of the title “Soils Engineer” without authorization. The facts and circumstances are as follows:

a. Respondent, a licensed civil engineer, owns and operates Soil Testers which performs civil engineering services in San Diego County, California. In or around May 2, 2003, Respondent signed and stamped a “Site Inspection” report (2003 report) for a property located on the Northwest Corner of 40th and Alpha Streets, in San Diego, California, for which Respondent had performed a site inspection. In or around October 3, 2006, Respondent signed and stamped a “Site Inspection” report for a property located at 162 Elm Avenue in Imperial Beach, California, for which Respondent had performed a site inspection. While dated three years apart, the 2003 and 2006 reports were nearly identical in terms of scope of work employed and the report content. In both the 2003 and 2006 reports, Respondent implied that he is a “Soil Engineer,” even though he is not licensed to use that title. Specifically, Respondent stated, “Soil



1 Testers and 'Soil Engineer' are synonymous hereinafter and shall be employed to inspect and test  
2 earthwork in accordance with these specifications, the accepted plans, and the requirements of  
3 any jurisdictive government agencies," among other references to "soil engineer."

4 b. On or about October 9, 2007, a Board Enforcement Analyst sent  
5 Respondent a letter advising him that a complaint had been opened against him. The letter  
6 admonished Respondent from using the title of "soil engineer" because he did not have a  
7 geotechnical license and he was not legally authorized to use such title. On or about October 30,  
8 2007, Respondent sent a letter to the board, wherein he indicated that he was not in violation of  
9 laws relating to the use of the title "soil engineer" and that he was using the term to identify  
10 which role he was serving on the project.

11 c. On November 8, 2007, the Board Enforcement Analyst sent Respondent a  
12 letter advising him to discontinue the use of the title "soil engineer." On November 29, 2007,  
13 Respondent sent the Board a letter indicating that he would not agree to discontinue the use of the  
14 title. On January 10, 2008, the Board Enforcement Analyst sent Respondent a letter, again  
15 advising him that his continued use of the title would result in the issuance of a citation.  
16 Approximately one month later, on February 8, 2008, the Board Enforcement Analyst sent  
17 another letter requesting that Respondent cease and desist using the title. Respondent sent a letter  
18 dated February 25, 2008 to the Board indicating that he did not use the title "soils engineer" and  
19 that the local agencies use the term "Soil Engineer's Certificate" to differentiate between that of  
20 an engineer performing soil engineering and an engineer of record on a project.

21 d. On March 12, 2008, the Board Enforcement Analyst sent Respondent  
22 another letter with a copy of Respondent's report, with notations indicating where modifications  
23 would need to be made in Respondent's reports in order to comply with the laws relating to the  
24 use of the title. Respondent sent a letter dated March 25, 2008, advising the Board that the  
25 general consensus within the engineering community was that the use of "Soil Engineer" was  
26 acceptable.



1 PRAYER

2 WHEREFORE, Complainant requests that a hearing be held on the matters herein alleged,  
3 and that following the hearing, the Board for Professional Engineers and Land Surveyors issue a  
4 decision:

5 1. Revoking or suspending Civil Engineer License Number C 21650, issued to Joseph  
6 Charles Smyth;

7 2. Ordering Joseph Charles Smyth to pay the Board for Professional Engineers and Land  
8 Surveyors the reasonable costs of the investigation and enforcement of this case, pursuant to  
9 Business and Professions Code section 125.3;

10 3. Taking such other and further action as deemed necessary and proper.  
11  
12

13 DATED: 7/5/10

*Original Signed*

14 DAVID E. BROWN ✓  
15 Executive Officer  
16 Board for Professional Engineers and Land Surveyors  
17 Department of Consumer Affairs  
State of California  
*Complainant*

18 SD2010800272  
19 70285558.doc  
20  
21  
22  
23  
24  
25  
26  
27  
28